## IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

| LAFARGE NORTH AMERICA, INC., f/k/a LAFARGE CORPORATION, | )                      |
|---|------------------------|
| Plaintiff,  | )                      |
| v.  | ) No. 05-1110-CV-W-FJG |
| DISCOVERY GROUP LLC, et al.,                            | )                      |
| Defendants.   | )<br>)                 |

## ORDER

Pending before the Court are (1) plaintiff's motion for leave to file its First Amended Complaint (Doc. No. 31); (2) defendants' motion for leave to file Third-Party Complaint (Doc. No. 33); and (3) defendants' motion to dismiss the Complaint (Doc. No. 10). Each motion will be considered below.

## I. Plaintiff's Motion for Leave to File its First Amended Complaint (Doc. No. 31)

Plaintiff moves for leave to file its First Amended Complaint to assert a cause of action for breach of fiduciary duty against defendants. Plaintiff asserts that this motion is timely and will not affect the Court's Scheduling Order. Plaintiff further asserts a grant of this motion poses no undue prejudice to defendants. Defendants have filed no opposition to the pending motion.

Pursuant to Federal Rule of Civil Procedure 15(a), leave to amend a pleading "shall be freely given when justice so requires." For good cause shown, plaintiff's motion for leave to file its First Amended Complaint (Doc. No. 31) is **GRANTED**. Plaintiff is **ORDERED** to file its First Amended Complaint on or before **June 12, 2006**.

II. Defendants' Motion for Leave to File Third-Party Complaint (Doc. No. 33)

Defendants seek leave to file a third party complaint asserting claims against Chapel

Development, LLC, Michael Atcheson, Larry Haas, Jerry Campbell, and Cohen Esrey Real

Estate Services, Inc. Defendants state that they believe the inclusion of these Third-Party

Defendants is necessary to afford full and complete relief in this matter. Plaintiff has filed

no opposition to this motion.

Pursuant to Federal Rule of Civil Procedure 14, Defendants' Motion for Leave to File

Third-Party Complaint (Doc. No. 33) is **GRANTED**, and defendants **SHALL** electronically

file their Third-Party Complaint on or before **June 12**, **2006**.

III. Defendants' Motion to Dismiss the Complaint (Doc. No. 10)

As detailed above, plaintiff has been granted leave to file a First Amended

Complaint. Consequently, as the Complaint will be replaced by the First Amended

Complaint, the Court finds that Defendants' Motion to Dismiss the Complaint (Doc. No. 10)

should be **DENIED AS MOOT.**<sup>1</sup>

IT IS SO ORDERED.

/s/ FERNANDO J. GAITAN, JR.

Fernando J. Gaitan, Jr.

United States District Judge

Dated: June 8, 2006 .

Kansas City, Missouri.

<sup>1</sup>To the extent that the arguments raised in defendants' motion to dismiss the Complaint apply to the First Amended Complaint, defendants may raise those arguments in a motion to dismiss the First Amended Complaint, referring the Court to the arguments made in the previously-filed documents as appropriate.

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